

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

DIANE G. MELECH, )  
Plaintiff, )  
vs. ) CIVIL ACTION NO.: 10-00573-KD-M  
LIFE INSURANCE COMPANY OF )  
NORTH AMERICA, *et al.*, )  
Defendants. )

**ORDER**

This matter is before the Court on Plaintiff's "Motion for Relief under Fed.R.Civ.P. 56(d) and Amendment of the Court's April 27, 2012 Discovery Order" and brief in support. (Docs. 134, 135). Plaintiff requests that: 1) Defendant Life Insurance Company of North America ("LINA") be ordered to produce performance evaluations between October 1, 2007-October 16, 2008 for Lisa Koller, Eric Poliziani, and Marianna DiLeo, three (3) employees who were involved in the closure of Plaintiff's claim; and 2) that the Court defer consideration of Defendant LINA's summary judgment motion until it produces this evidence "which is critical to the Court's consideration of whether LINA's claims decision in this instance was improperly motivated." (Doc. 134 at 1).

Rule 56(d) provides that "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order. FED.R.CIV.P. Rule 56(d). The decision to grant or deny a Rule 56(d) motion lies within the sound discretion of the trial judge. See, e.g., Burks v. Am. Cast Iron Pipe Co., 212 F.3d 1333, 1336 (11<sup>th</sup> Cir. 2000)). The discovery issues raised in Plaintiff's motion have already been addressed by this Court -- they have been the subject of a

motion to compel, which Magistrate Judge Milling denied, as well as an Appeal of that ruling, which has been affirmed. (Docs. 124, 129, 130, 131, 133). As such, rather than a meritorious Rule 56(d) request, the motion seeks reconsideration of the Court's affirmation of the Magistrate Judge's discovery ruling (*i.e.*, to appeal or have reconsidered, the order denying the appeal). Accordingly, it is **ORDERED** that Plaintiff's Motion (Docs. 134, 135) is **DENIED**.

**DONE** and **ORDERED** this the 23<sup>rd</sup> day of **July 2012**.

/s/ Kristi K. DuBose  
**KRISTI K. DUBOSE**  
**UNITED STATES DISTRICT JUDGE**